CRH
JSW

13 November 1959

MEMORANDUM FOR THE RECORD

SUBJECT: Processing Required in License Application Lacking Answers to Security Questions

1. In the case of Graham v. Richmond decided on 5 November 1959 by the Circuit Court of Appeals for the District of Columbia, it was held that an application for a document which would enable one to be employed on a private vessel in the United States Merchant Marine must be given consideration by the Coast Guard even though the applicant refused to answer questions on constitutional grounds relating to his connection with Communist Party organizations. Because Graham had refused to answer 3 out of 14 questions the Coast Guard had not processed the application so that in effect Graham was precluded from obtaining employment in the Merchant Marine.

2. The Court felt that mere failure to furnish requested information should not automatically disqualify Graham. According to the 2-1 opinion, under 50 USC 191, Executive Orders and regulations, refusal to answer in and of itself is not enough for rejection of an application; Graham's right to employment must be measured by the standards set out by the President and Coast Guard Commandant: "The Commandant is satisfied that the character and habits of life of such persons are such as to authorize the belief that the presence of the individual on board would not be inimical to the security of the United States." The Court found that by regulation the Coast Guard had not provided for rejection of an application short of a hearing. Therefore, the Court reasoned if the Commandant is not satisfied without a hearing as to the security qualifications of the applicant, Graham was entitled to the processing of the application in the manner which the regulations do provide. The opinion states that he may not be able to satisfy the Coast Guard, but he is entitled to the opportunity to try.

3. In a vigorous dissent, Judge Burger contended that the Coast Guard was entitled to a completed application on which to act. Up to the time Graham's completed application was received, Judge Burger believed that Graham's application had no status and the question of a hearing is thus premature.

STATINT

OGC:MCM:jem

✓Subject - Security -2
Signer
Chrono

Office of General Counsel

22 April 1958

MEMORANDUM FOR THE RECORD

SUBJECT: Security Clearance Revocation

1. In Greene v. McElroy decided by the U.S. Court of Appeals for the District of Columbia on 17 April 1958, the revocation of a security clearance by the Secretary of the Navy was challenged. The appellant was an employee of a private corporation holding Defense Department contracts, and he had clearance for and access to classified information. A District Court order dismissed his complaint for lack of a justiciable controversy, (150 F. Supp 958) and this court affirmed.

2. Greene was dismissed from his position as Vice President and General Manager of ERCO following receipt by ERCO of a letter from the Secretary of the Navy dated 17 April 1953 which stated that Greene's access to Navy classified security information was "inconsistent with the best interests of national security", and requested ERCO to exclude Greene "from any part of your plants, factories or sites at which classified Navy projects are being carried out and to bar him access to all Navy classified security information." Greene requested and was accorded extensive administrative hearings and was informed in March 1956 that the original decision was affirmed.

3. The relief Greene sought in the Courts was a declaration that he was barred from access to classified information in a manner which violated the Constitution and also he sought a court order restoring him to status quo ante which would have made it possible for ERCO to rehire him. (He was fired from an $18,000 a year position at ERCO and had been doing drafting since his dismissal at around $4,000 a year.)

4. In an opinion by Judge Washington, the Court held that Congress in the Armed Services Procurement Act of 1947, 62 Stat. 21; 41 USC 151-61 (1952) gave to the Secretary of Defense "broad discretion to determine in what manner the 'character, ingredients, or components' covered by its contracts to purchase supplies should be safeguarded from disclosure. The Court decided that it did not need to determine whether the "housekeeping statute", 5 USC 22 was "an independent source of executive authority for withholding defense or other types of executive information."

5. Executive Orders 10501 and its predecessor 10290 specifically direct department heads to make "appropriate provision for safekeeping classified defense information in accord with congressional authorization of the department head to enter into negotiated contracts."

6. To preserve the national existence, according to the opinion, "the Secretary has, and of necessity must have, wide latitude in designating persons qualified for access to classified defense information in situations like the present", namely where the problem relates to the selection of persons to be given that information for the purpose of designing or producing for the Government defense materials. The general program for industrial security, as reflected in the regulations which guide the Secretary and his subordinates in classifying and designating, does not exceed the Secretary's authority. The regulations did not operate to deprive Greene of his occupation without due process, but rather the Government denied him access "under a program having a direct relationship to the requirements of the national defense, and not inherently unreasonable in its coverage."

7. Greene's contention that he was not confronted with his accusers was dismissed by the court which said that "mandatory confrontation with accusers is unknown . . . in dismissals of Federal employees, and has been since the beginning of our Government. Surely appellant is entitled to no more . . ." Also, no court has "actually ordered the Government to disclose information contrary to its own wishes" but the court recognized that in some instances the Government has been penalized for its refusal to disclose information. But, "no court has yet forced the Government to choose between . . . alternatives - either of which might compromise the security of the country."

8. The reality of the injury does not mean that Greene is "entitled, without more to judicial relief." In discussing the fact that there was no justiciable controversy the court had this to say as to its role (or lack of it) in security cases:

> "For a court to hear de novo the evidence as to Greene's fitness to be assigned to a particular kind of confidential work would be a bootless task, involving judgements remote from the experience and competence of the judiciary. Indeed, any meaningful judgement in such matters must rest on considerations of policy, and decisions as to comparative risks, appropriate only to the executive branch of the Government. It must rest also on a mass of information, much of it secret, not appropriate for judicial appraisal."

STATIN

[redacted]
Office of General Counsel

OGC:MM:jem

✓ Subject - 1 cc.
Signer
Chrono